

BY \_\_\_\_\_ DEPUTY

## ) ) ) ) ) ) ) ) )

## JURY TRIAL DEMANDED

## EXHIBIT 13

City's Second Set of Interrogatories to Plaintiff, Interrogatory No. 19). In his Response submitted February 18, 2020, Plaintiff has now developed a new justification for refusing to answer, objecting in response, and stating that the request seeks irrelevant information that is not reasonably calculated to the discovery of admissible evidence. (See Exhibit 4, Plaintiff's Response to Defendant City's Second Set of Interrogatories, Response to Interrogatory No. 19). Defendant respectfully disagrees.

In Oklahoma, the Courts have consistently made clear that discovery is broad.

Our discovery procedures are broad and, with certain limitations (see *Giles v. Doggett, Okl.*, 500 P.2d 574, 516, and cases there cited), it is not necessary that questions be limited to those which would be admissible in court. *State ex rel. Westerheide et al. v. Shilling, Judge*, 190 Okl. 305, 123 P.2d 674. Evidence which might lead to the disclosure of admissible evidence is discoverable

*Unit Rig & Equip. Co. v. East*, 1973 OK 100, 514 P.2d 396, 397; see also *YWCA of Oklahoma City v. Melson*, 1997 OK 81, 944 P.2d 304, 307 ("It is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence" (citing title 12, Okla. Stat. § 3226(B)(1)). Here, Plaintiff is alleging that he was terminated in violation of public policy. He has a duty to mitigate his damages under Oklahoma law, and must make reasonable efforts to find comparable employment and minimize his damages. (See OUJI 21.13). Plaintiff's work history, including any prior resignations and terminations, is clearly relevant to Plaintiff's ability to find additional work, and thus his ability to mitigate his damages. Certainly, at the very least, Plaintiff's work history might lead to the disclosure of admissible evidence, which makes it discoverable. Frankly, this is not a particularly burdensome request. Such questions of work history are commonly asked in discovery in employment cases. The fact that Plaintiff first

objected on the grounds of an insufficient time limitation, and then objected further even once a time limitation was provided, shows that Plaintiff has no valid objection here. Plaintiff should be compelled to provide any resignations or terminations in at least the last ten years, and to provide the name and position which he held at the time of these resignations or terminations.

## **II. EMOTIONAL DISTRESS-MEDICAL PROVIDERS AND RELEASES**

In Interrogatory No. 8 (See Exhibit 1, Interrogatory No. 8)), Defendant asked Plaintiff if he was seeking damages for any mental, emotional, or psychological harm in this case, and if the answer was yes, sought the identity and address of each health care provider from whom Plaintiff sought and/or received any mental, emotional, or psychological treatment from January 1, 2014 through the present. Plaintiff's Response (See Exhibit 2, Response to Interrogatory No. 8) noted that Plaintiff IS seeking such emotional distress damages, but objected to providing the names and addresses of any health care providers. Similarly, in Request for Production No. 8 (See Exhibit 5, Defendant's First Set of Requests for Production of Documents to Plaintiff, Request No. 8), Defendant requested that Plaintiff execute the enclosed release, so that Defendant could obtain copies of Plaintiff's medical, mental, emotional, and/or psychological records for the period from January 1, 2014 through present. Plaintiff objected to signing the release, stating only that no responsive records (meaning records of Plaintiff specifically seeking *mental health* counseling) exist. (See Exhibit 6, Response to Request for Production No. 8). The parties attempted to come to an agreement on this matter, with Defendant City even offering to provide a more limited release, so that when the release was submitted to Plaintiff's medical professionals, the only documents requested would be related to emotional distress, anxiety, therapy, and mental health counseling. (See Exhibit 7, January 24, 2020 email from the undersigned to Colby Addison).

However, Plaintiff refused to sign even this limited release. (See Exhibit 8, January 29, 2020 email from Colby Addison to the undersigned).

Under Oklahoma law, parties may obtain discovery regarding any matter, not privileged, which is relevant to any party's claim or defense, reasonably calculated to lead to the discovery of admissible evidence and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable. Okla. Stat. tit. 12, § 3226(B)(1).

Federal courts have interpreted the substantially similar Fed. R.Civ. P. 26(b)(1) to require Plaintiffs to provide the type of information requested by Defendant city here. "In accordance with the rule's broad construction of relevance, courts have held that discovery requests seeking an employment discrimination plaintiff's medical and psychological records are ... relevant as to both causation and the extent of plaintiffs' alleged injuries and damages for emotional pain, suffering, and mental anguish." *Seegmiller v. Macey's Inc.*, 2013 WL 3148464, at \*2 (D. Utah June 19, 2013)(unpublished case, attached as Exhibit 9); *see also Sims v. Unified Gov't of Wayandotte County/Kansas City*, 2001 WL 1155302, at \*3 (D.Kan May 1, 2001)(unpublished case, attached as Exhibit 10)(plaintiff placed mental and emotional state at issue by claiming damages for mental anguish and emotional distress in connection with her Title VII discrimination and retaliation claims). In addition, a plaintiff's medical records are relevant to the "preparation of defendant's defenses against the emotional distress claims because the records may reveal another source of

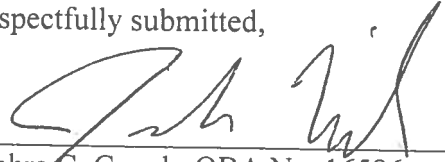
stress unrelated to defendant which may have affected a plaintiff's emotional distress." *See Seegmiller, supra*.

Where a Plaintiff puts his medical and psychological health at issue by seeking to recover damages for emotional distress, "access to Plaintiff's medical and mental health records is warranted so that Defendants may evaluate, for purposes of their own defense, whether Plaintiff's emotional distress stems from her allegations, a pre-existing condition or from events entirely unrelated to the Defendant." *See Seegmiller, supra*. Here, Plaintiff is seeking damages for his emotional distress. As such, Defendant City is entitled to know what physicians treated Plaintiff for his mental and emotional health, even prior to the events at issue in this lawsuit, to determine whether his emotional distress is related or unrelated to the actions of Defendant. Plaintiff should be compelled to fully respond to Interrogatories 8 and provide the release requested in Request for Production No. 8, so that Defendant City can determine for itself the sources of Plaintiff's mental and emotional distress.

### **CONCLUSION**

Defendant City seeks an Order compelling Plaintiff to respond to these discovery requests within 5 days of the Order.

Respectfully submitted,



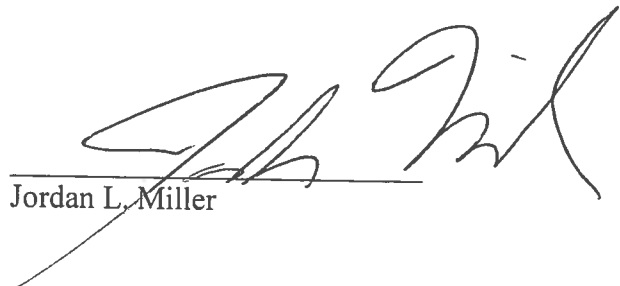
Ambre C. Gooch, OBA No. 16586  
Jordan L. Miller, OBA No. 30892  
COLLINS, ZORN & WAGNER, P.C.  
429 N.E. 50th, Second Floor  
Oklahoma City, OK 73105  
Telephone: (405) 524-2070  
Facsimile: (405) 524-2078  
E-mail: [acg@czwlaw.com](mailto:acg@czwlaw.com)  
[jlm@czwlaw.com](mailto:jlm@czwlaw.com)

ATTORNEYS FOR DEFENDANT  
CITY OF CRESCENT

**CERTIFICATE OF SERVICE**

I hereby certify that on February 25, 2020, I sent the above and foregoing by U.S. certified mail, postage prepaid, to:

D. Colby Addison, electronic mail at: [colby@centerforemploymentlaw.com](mailto:colby@centerforemploymentlaw.com)  
Leah M. Roper, electronic mail at: [leah@centerforemploymentlaw.com](mailto:leah@centerforemploymentlaw.com)  
The Center for Employment Law  
1133 N. Portland Avenue  
Oklahoma City, OK 73107  
*Attorneys for Plaintiff*



Jordan L. Miller

IN THE DISTRICT COURT OF LOGAN COUNTY  
STATE OF OKLAHOMA

TRENT NERE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CJ-2019-203
	)	
CITY OF CRESCENT,	)	JURY TRIAL DEMANDED
	)	
Defendant.	)	

**DEFENDANT CITY'S FIRST  
SET OF INTERROGATORIES TO PLAINTIFF**

The Defendant City requests that the Plaintiff answer in writing, under oath, each of the following interrogatories in accordance with Fed. R. Civ. P. 33.

**INTERROGATORIES**

**INTERROGATORY NO. 1:** Identify the person or persons answering, or assisting in the answering of, these Interrogatories.

**INTERROGATORY NO. 2:** State fully and in detail the type and amount of damages being sought in this case from the Defendant.

**INTERROGATORY NO. 3:** Please set forth your educational history.

**INTERROGATORY NO. 4:** Please identify all addresses where you have lived, and with whom you have lived at these addresses, for the past 10 years.

**INTERROGATORY NO. 5:** Identify your present legal name, any alias name you have or have had, and any other name you have gone by, whether such name was a nick name, an abbreviation, a cover, an alias, etc.

**INTERROGATORY NO. 6:** Have you ever been hospitalized and/or treated for a mental health, emotional, or psychological condition, problem, or issue? If so, please



obtained, and the manner in which it was recorded (if it was recorded).

**INTERROGATORY NO. 12:** Have you undertaken any effort, since December 1, 2018, to gain employment anywhere, other than with the City? If so, please identify the employer from whom you attempted to gain employment, the position which you attempted to gain, the salary/wage such position provided, whether you were offered such employment, and whether you accepted such employment. If you did not accept such employment, please set forth your explanation for not accepting it.

**INTERROGATORY NO. 13:** Have you ever been asked to resign from any employment or terminated from employment? If your answer is yes, please provide the name of the employer and position you held at the time you were asked to resign or which your employment was terminated.

**INTERROGATORY NO. 14:** Did you, or anyone acting on your behalf, submit an evidence preservation letter to the City? If your answer is yes, please provide the name of the person/entity who submitted it, the date it was submitted, and to whom it was submitted.

**INTERROGATORY NO. 15:** Did you, or anyone acting on your behalf, submit a Notice of Tort Claim to the City? If your answer is yes, please provide the name of the person/entity who submitted it, the date it was submitted, and to whom it was submitted.

**INTERROGATORY NO. 16:** Identify the date you first contemplated filing a lawsuit regarding your employment with the City.

**INTERROGATORY NO. 17:** Identify all individuals who you spoke with at the Department of Environmental Quality regarding the issues described in your Petition, the

date of those communications, and the content of those communications.

Respectfully submitted,



Ambre C. Gooch, OBA No. 16586  
COLLINS, ZORN & WAGNER, P.C.  
429 N.E. 50th, Second Floor  
Oklahoma City, OK 73105  
Telephone: (405) 524-2070  
Facsimile: (405) 524-2078  
E-mail: [acg@czwlaw.com](mailto:acg@czwlaw.com)

ATTORNEY FOR DEFENDANT  
CITY OF CRESCENT

**CERTIFICATE OF SERVICE**

I hereby certify that on November 15, 2019 I sent the above and foregoing by U.S. certified mail, postage prepaid, to:

D. Colby Addison, electronic mail at: [colby@lhllaw.com](mailto:colby@lhllaw.com)  
Leah M. Roper  
LAIRD HAMMONS LAIRD, PLLC  
1332 S.W. 89<sup>th</sup> Street  
Oklahoma City, OK 73159  
***Attorneys for Plaintiff***



Ambre C. Gooch

IN THE DISTRICT COURT OF LOGAN COUNTY  
STATE OF OKLAHOMA

TRENT NERE,

Plaintiff,

v.

Case No. CJ-2019-203

CITY OF CRESCENT,

Defendant.

PLAINTIFF'S RESPONSES TO DEFENDANT'S OPENING  
DISCOVERY REQUESTS & SUPPLEMENTAL REQUESTS  
FOR PRODUCTION

INTERROGATORIES

INTERROGATORY NO. 1: Identify the person or persons answering,  
or assisting in the answering of, these Interrogatories.

RESPONSE: Objection. Plaintiff objects to the extent this request  
invades upon attorney-client privilege, i.e. the requirement that Plaintiff  
disclose communications with his counsel. Without waiver of this objection,  
Plaintiff responds as follows: Plaintiff.

INTERROGATORY NO. 2: State fully and in detail the type and  
amount of damages being sought in this case from the Defendant.

RESPONSE: Objection. Plaintiff objects in that this request calls for  
speculation by Plaintiff of amounts awardable at the discretion of the jury,  
including the amounts the jury may choose to award. Additionally, Plaintiff is  
not an attorney, and this request seeks to have Plaintiff, or rather his counsel,



**INTERROGATORY NO. 12:** Have you undertaken any effort, since December 1, 2018, to gain employment anywhere, other than with the City? If so, please identify the employer from whom you attempted to gain employment, the position which you attempted to gain, the salary/wage such position provided, whether you were offered such employment, and whether you accepted such employment. If you did not accept such employment, please set forth your explanation for not accepting it.

**RESPONSE:** Plaintiff first sought employment other than with the City after his termination. Plaintiff does not recall each and every employer that he applied for a position with. To the best of Plaintiff's recollection, Plaintiff applied for employment with R&T in Crescent, the City of Purcell, the City of Lexington, the City of Wayne, H&T convenience store, S&T Saltwater, along with others. Plaintiff was offered employment by S&T Saltwater in mid to late March 2019. Plaintiff accepted employment as a saltwater hand earning \$15.00 per hour. Plaintiff was not offered employment with any other employer.

**INTERROGATORY NO. 13:** Have you ever been asked to resign from any employment or terminated from employment? If your answer is yes, please provide the name of the employer and position you held at the time you were asked to resign or which your employment was terminated.

**RESPONSE:** Objection. This request has no temporal limitation and asks about every employer of Plaintiff's entire life. Thus, is it facially disproportionate to the discovery needs of this case. Such terminations can have no bearing on any claim or defense related to Plaintiff's wrongful termination by Defendant.

**INTERROGATORY NO. 14:** Did you, or anyone acting on your behalf, submit an evidence preservation letter to the City? If your answer is yes, please provide the name of the person/entity who submitted it, the date it was submitted, and to whom it was submitted.

**RESPONSE:** A Notice of Tort Claim was sent via certified mail on February 26, 2019, to the City of Crescent, Attn: Municipal Clerk. Receipt was signed on February 28, 2019, by Lori Lindholm, as best as it can be read. This is the only letter provided to the City that would put the City on notice of its duty to preserve evidence.

**INTERROGATORY NO. 15:** Did you, or anyone acting on your behalf, submit a Notice of Tort Claim to the City? If your answer is yes, please provide the name of the person/entity who submitted it, the date it was submitted, and to whom it was submitted.

**RESPONSE:** A Notice of Tort Claim was sent via certified mail on February 26, 2019, to the City of Crescent, Attn: Municipal Clerk. Receipt was signed on February 28, 2019, by Lori Lindholm, as best as it can be read.

*D. Colby Addison*

---

D. Colby Addison, OBA #32718  
Leah M. Roper, OBA #32107  
1133 N. Portland Ave.  
Oklahoma City, OK 73107  
Telephone: 405.252.1180  
[colby@centerforemploymentlaw.com](mailto:colby@centerforemploymentlaw.com)  
[leah@centerforemploymentlaw.com](mailto:leah@centerforemploymentlaw.com)  
ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing instrument was: ( X ) mailed via U.S. Mail; ( ) certified, with return receipt requested; ( ) hand delivered; ( ) transmitted via facsimile; and/or (X) e-mail on this 3rd day of January, 2020 to the following:

Ambre C. Gooch  
Jordan Miller  
Collins, Zorn & Wagner, PC  
429 NE 50<sup>th</sup>, 2<sup>nd</sup> Floor  
Oklahoma City, OK 73105  
[acg@czwlaw.com](mailto:acg@czwlaw.com)  
[ilm@czwlaw.com](mailto:ilm@czwlaw.com)  
ATTORNEY FOR DEFENDANT

*D. Colby Addison*

---

ATTORNEY FOR PLAINTIFF



IN THE DISTRICT COURT OF LOGAN COUNTY  
STATE OF OKLAHOMA

TRENT NERE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CJ-2019-203
	)	
CITY OF CRESCENT,	)	JURY TRIAL DEMANDED
	)	
Defendant.	)	

**DEFENDANT CITY'S SECOND  
SET OF INTERROGATORIES TO PLAINTIFF**

The Defendant City requests that the Plaintiff answer in writing, under oath, each of the following interrogatories in accordance with Fed. R. Civ. P. 33.

**INTERROGATORIES**


**INTERROGATORY NO. 18:** Identify the places of employment, and positions of employment, you have held from January 1, 2016 to the present.

**INTERROGATORY NO. 19:** In the last 10 years, have you been terminated from employment or asked to resign your employment? If your answer is yes, please identify the place of employment from which you were terminated and/or asked to resign.

**INTERROGATORY NO. 20:** Identify all professional and/or vocational certificates and/or licenses you have obtained, for the period of January 1, 2017 to the present.



Respectfully submitted,



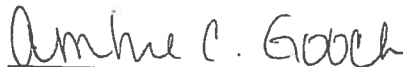
Ambre C. Gooch, OBA No. 16586  
COLLINS, ZORN & WAGNER, P.C.  
429 N.E. 50th, Second Floor  
Oklahoma City, OK 73105  
Telephone: (405) 524-2070  
Facsimile: (405) 524-2078  
E-mail: [acg@czwlaw.com](mailto:acg@czwlaw.com)

ATTORNEY FOR DEFENDANT  
CITY OF CRESCENT

**CERTIFICATE OF SERVICE**

I hereby certify that on January 17, 2020, I sent the above and foregoing electronically and by U.S. certified mail, postage prepaid, to:

D. Colby Addison, electronic mail at: [colby@lhllaw.com](mailto:colby@lhllaw.com)  
Leah M. Roper  
LAIRD HAMMONS LAIRD, PLLC  
1332 S.W. 89<sup>th</sup> Street  
Oklahoma City, OK 73159  
***Attorneys for Plaintiff***



Ambre C. Gooch

IN THE DISTRICT COURT OF LOGAN COUNTY  
STATE OF OKLAHOMA

TRENT NERE,

Plaintiff,

v.

Case No. CJ-2019-203

CITY OF CRESCENT,

Defendant.

PLAINTIFF'S RESPONSES TO DEFENDANT'S  
FIRST REQUESTS FOR ADMISSION AND  
SECOND SET OF INTERROGATORIES

INTERROGATORIES

INTERROGATORY NO. 18: Identify the places of employment,  
and positions of employment, you have held from January 1, 2016 to the  
present.

RESPONSE: Objection. This request seeks irrelevant information,  
is not reasonably calculated to the discovery of admissible evidence, is  
disproportional to the discovery needs of this case, and has no importance in  
resolving the issues in this action (i.e. whether Plaintiff's termination by  
Defendant was lawful or not). Employers of Plaintiff prior to Defendant's  
unlawful termination have no bearing on any claim or defense in this litigation.  
Subject to this objection, Plaintiff responds with his employers subsequent to  
Defendant, i.e., employers with whom Plaintiff held a position on or after  
January 30, 2018, as such information may impact damages calculations.



Subject to the objections stated, Plaintiff refers Defendant to Plaintiff's response to Interrogatory No. 12.

**INTERROGATORY NO. 19:** In the last 10 years, have you been terminated from employment or asked to resign your employment? If your answer is yes, please identify the place of employment from which you were terminated and/or asked to resign.

**RESPONSE:** Objection. This request seeks irrelevant information, is not reasonably calculated to the discovery of admissible evidence, is disproportional to the discovery needs of this case, and has no importance in resolving the issues in this action (i.e. whether Plaintiff's termination by Defendant was lawful or not). Employers of Plaintiff prior to Defendant's unlawful termination have no bearing on any claim or defense in this litigation. Subject to this objection, Plaintiff responds with his employers subsequent to Defendant, i.e., employers with whom Plaintiff held a position on or after January 30, 2018, as such information may impact damages calculations. Subject to the objections stated, no.

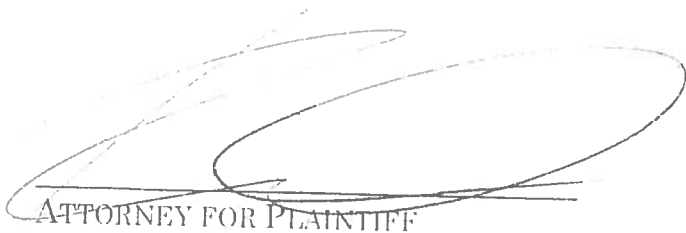
**INTERROGATORY NO. 20:** Identify all professional and/or vocational certificates and/or licenses you have obtained, for the period of January 1, 2007 (sp?) to the present.

**RESPONSE:** Objection. This request is vague and ambiguous as to the temporal range requested. Plaintiff objects to the extent this request may

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument was: ( ) mailed via U.S. Mail; (X) certified, with return receipt requested; ( ) hand delivered; ( ) transmitted via facsimile; and/or (X) e-mail on this 18th day of February, 2020 to the following:

Ambre C. Gooch  
Jordan Miller  
Collins, Zorn & Wagner, PC  
429 NE 50<sup>th</sup>, 2<sup>nd</sup> Floor  
Oklahoma City, OK 73105  
[acg@czwlaw.com](mailto:acg@czwlaw.com)  
[jlm@czwlaw.com](mailto:jlm@czwlaw.com)  
ATTORNEY FOR DEFENDANT




ATTORNEY FOR PLAINTIFF

VERIFICATION

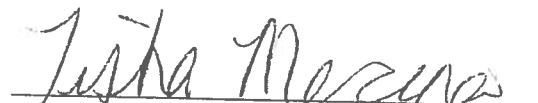
STATE OF OKLAHOMA                    )  
  ) ss:  
OKLAHOMA COUNTY                    )

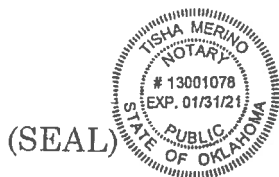
Trent Nere, of lawful age, being first duly sworn, deposes and states:

I have read the above and foregoing Answers to Defendant's Second Set of Interrogatories to Plaintiff; that I am a party to this action and the statements, allegations, and facts therein set forth are true and correct to the best of my knowledge, information, and belief.

  
Trent Nere

Subscribed and sworn to before me this 18th day of February 2020.

  
Notary Public



My Commission Expires:

01/31/21

IN THE DISTRICT COURT OF LOGAN COUNTY  
STATE OF OKLAHOMA

TRENT NERE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CJ-2019-203
	)	
CITY OF CRESCENT,	)	JURY TRIAL DEMANDED
	)	
Defendant.	)	

**DEFENDANT CITY'S FIRST REQUEST  
FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF**

Defendant City requests that Plaintiff produce the following items within thirty (30) days following service of this request. The Defendant City requests that these documents be made available for inspection and copying at the offices of Collins, Zorn & Wagner, P.C., 429 N.E. 50<sup>th</sup> St., Second Floor, Oklahoma City, OK 73105, or to mail copies of the requested items within thirty (30) days after receipt of this Request.

When responding to this Request for Production of Documents, you are requested to respond in writing and state as to each of the requests:

- (i) That there are such documents and that they will be produced;
- (ii) That there are such documents but you refuse to produce them because of a claim of privilege or for some other reason; or
- (iii) That there are no such documents as requested by the particular request.

As to each document you are producing, please identify it by production request number, description (e.g., memo, contract, letter, report, handwritten note, etc.), date, author, recipient(s), number of pages and subject matter.

As to each document you are withholding from production, please identify it by



description (e.g., memo, contract, letter, report, handwritten note, etc.), date, author, recipient(s), number of pages and subject matter, and state the basis for its nonproduction.

### **DOCUMENTS REQUESTED**

**REQUEST FOR PRODUCTION NO. 1:** All documents or other evidence which supports or relates to your allegations in each claim, cause of action or count of your Petition.

**REQUEST FOR PRODUCTION NO. 2:** All documents or other evidence that are to be relied on or reviewed by any expert or lay witnesses for you in this case.

**REQUEST FOR PRODUCTION NO. 3:** All documents or other evidence that are to be relied on or reviewed by any expert witnesses.

**REQUEST FOR PRODUCTION NO. 4:** All documents or other evidence that have been relied on or referred to in responding to Defendant City's First Set of Interrogatories in this case.

**REQUEST FOR PRODUCTION NO. 5:** All documents or other evidence that will be introduced or sought to be introduced as evidence at trial.

**REQUEST FOR PRODUCTION NO. 6:** An identification of the type and, if known, the amount of damages you allege you have suffered as a result of any action or inaction by Defendant City, or identified in your Interrogatory Responses.

**REQUEST FOR PRODUCTION NO. 7:** All documents or other evidence which are evidence of your alleged damages that are alleged in your Petition.

**REQUEST FOR PRODUCTION NO. 8:** Please execute the enclosed release

attached as Exhibit "A," so that the Defendant City may obtain copies of your medical, mental, emotional, and/or psychological records for the period of January 1, 2014 to the present. A portion of Exhibit A has been left blank intentionally so that you may fill in the provider by name/facility. If you identify more than one provider, you should complete a separate release for each provider.

**REQUEST FOR PRODUCTION NO. 9:** Produce all medical records that relate to any physical injuries or ailments you are complaining about in your lawsuit.

**REQUEST FOR PRODUCTION NO. 10:** Produce all mental/psychological records that relate to any mental/emotional/psychological injuries you are complaining about in your lawsuit.

**REQUEST FOR PRODUCTION NO. 11:** Produce all of your mental/psychological/emotional health records for the period January 1, 2014 to the present.

**REQUEST FOR PRODUCTION NO. 12:** Produce any and all journals, diaries, calendars, personal notes, logs, etc., which in any way relate to any fact or issue that you are complaining about in this lawsuit.

**REQUEST FOR PRODUCTION NO. 13:** Produce any and all journals, diaries, calendars, personal notes, logs, etc., which in any way relate to your feelings, thoughts, observations, and/or treatment regarding your employment that is at issue in this case.

**REQUEST FOR PRODUCTION NO. 14:** Produce any and all photos, audio, and/or video recordings, which in any way relate to any fact or issue that you are complaining about in this lawsuit.

**REQUEST FOR PRODUCTION NO. 15:** All statements obtained by you, or on

Respectfully submitted,




Ambre C. Gooch, OBA No. 16586  
COLLINS, ZORN & WAGNER, P.C.  
429 N.E. 50th, Second Floor  
Oklahoma City, OK 73105  
Telephone: (405) 524-2070  
Facsimile: (405) 524-2078  
E-mail: [acg@czwlaw.com](mailto:acg@czwlaw.com)

ATTORNEY FOR DEFENDANT  
CITY OF CRESCENT

**CERTIFICATE OF SERVICE**

I hereby certify that on November 15, 2019 I sent the above and foregoing by U.S. certified mail, postage prepaid, to:

D. Colby Addison, electronic mail at: [colby@lhllaw.com](mailto:colby@lhllaw.com)  
Leah M. Roper  
LAIRD HAMMONS LAIRD, PLLC  
1332 S.W. 89<sup>th</sup> Street  
Oklahoma City, OK 73159  
***Attorneys for Plaintiff***

  
Ambre C. Gooch

### AUTHORIZATION TO DISCLOSE PROTECTED HEALTH INFORMATION

Patient Name: Trent Nere  
Date of Birth: \_\_\_\_\_  
Social Security #: \_\_\_\_\_

I hereby authorize the use or disclosure of the Protected Health Information (PHI) described below to be provided to or obtained by the following:

**Individual/Facility Disclosing PHI:**

**Individual/Facility Receiving PHI:**

Information authorized for use or disclosure, or to be obtained: X All medical, counseling, psychological, and/or psychiatric records concerning this patient for the period of January 1, 2014 to the present

The information will be obtained, used, or disclosed for the following purpose(s) only:

       Insurance             Continued treatment        X   Legal             At the request of the patient or patient's representative

Other (specify)

I understand: I may revoke this authorization at any time, in writing, except revocation will not apply to information already used or disclosed in response to this authorization. I release the entities listed above, their agents and employees from any liability in connection with the use or disclosure of the protected health information covered by this authorization. The entity authorized to disclose the information will not be compensated by the recipient for the disclosure, except for the cost of copying and mailing as authorized by law. Information used or disclosed pursuant to this authorization may be subject to redisclosure by the recipient and no longer protected by federal law. However, the recipient may be prohibited from disclosing substance abuse information under the Federal Substance Abuse Confidentiality Requirements. I have the right to inspect the health information to be released and I may refuse to sign this authorization. Unless the purpose of this authorization is to determine payment of a claim for benefits, the requesting entity will not condition the provision of treatment or payment for my care on my signing this authorization. The information authorized for release also may include drug/alcohol abuse treatment records. This category of medical information/records is protected by Federal confidentiality rules (42 CFR Part 2). The Federal rules prohibit anyone receiving this information or records from making further release unless further release is expressly permitted by the written authorization of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2. A general authorization for the release of medical or other information is not sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient. As a result, by signing below, I

specifically authorize any such records included in my health information to be released.

I understand that my medical information may indicate that I have a communicable or venereal disease which may include, but is not limited to, diseases such as hepatitis, syphilis, gonorrhea or the human immunodeficiency virus, also known as Acquired Immune Deficiency Syndrome (AIDS). I further understand that my medical information may indicate that I have or have been treated by psychological or psychiatric conditions or substance abuse

\_\_\_\_\_  
Signature of Patient or Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Representative's Relation to Patient

\_\_\_\_\_  
Expiration Date of  
Authorization (or one year if  
not dated)

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

**NOTICE OF RIGHTS:** Information in your medical record that you have or may have a communicable or venereal disease is made confidential by law and cannot be disclosed without your permission except in limited circumstances including disclosure to persons who have had risk exposures, disclosure pursuant to an order of the court or the Department of Health, disclosure among health care providers or disclosure for statistical or epidemiological purposes. When such information is disclosed, it cannot contain information from which you could be identified unless disclosure of that identifying information is authorized by you, by an order of the court or the Department of Health or by law.

**EXHIBIT A**

IN THE DISTRICT COURT OF LOGAN COUNTY  
STATE OF OKLAHOMA

TRENT NERE,  
Plaintiff,

v.

CITY OF CRESCENT,  
Defendant.

Case No. CJ-2019-203

PLAINTIFF'S RESPONSES TO DEFENDANT'S OPENING  
DISCOVERY REQUESTS & SUPPLEMENTAL REQUESTS  
FOR PRODUCTION

INTERROGATORIES

INTERROGATORY NO. 1: Identify the person or persons answering,  
or assisting in the answering of, these Interrogatories.

RESPONSE: Objection. Plaintiff objects to the extent this request  
invades upon attorney-client privilege, i.e. the requirement that Plaintiff  
disclose communications with his counsel. Without waiver of this objection,  
Plaintiff responds as follows: Plaintiff.

INTERROGATORY NO. 2: State fully and in detail the type and  
amount of damages being sought in this case from the Defendant.

RESPONSE: Objection. Plaintiff objects in that this request calls for  
speculation by Plaintiff of amounts awardable at the discretion of the jury,  
including the amounts the jury may choose to award. Additionally, Plaintiff is  
not an attorney, and this request seeks to have Plaintiff, or rather his counsel,



**RESPONSE:** Objection, to the extent this request requires Plaintiff's counsel to, at this early stage of discovery, disclose their trial strategy by providing an exhibit list. Plaintiff may utilize any document produced by either party in the trial of this matter. Plaintiff is not withholding documents under this objection, but is objecting to the instruction that he organize and produce his documents to show which he will utilize at trial, as instructed by Defendant.

**REQUEST FOR PRODUCTION NO. 6:** An identification of the type and, if known, the amount of damages you allege you have suffered as a result of any action or inaction by Defendant City, or identified in your Interrogatory Responses.

**RESPONSE:** Objection. This is an interrogatory, not a request for production.

**REQUEST FOR PRODUCTION NO. 7:** All documents or other evidence which are evidence of your alleged damages that are alleged in your Petition.

**RESPONSE:** Plaintiff will produce.

**REQUEST FOR PRODUCTION NO. 8:** Please execute the enclosed release attached as Exhibit "A," so that the Defendant City may obtain copies of your medical, mental, emotional, and/or psychological records for the period of January 1, 2014 to the present. A portion of Exhibit A has been left blank

intentionally so that you may fill in the provider by name/facility. If you identify more than one provider, you should complete a separate release for each provider.

**RESPONSE:** Plaintiff objects to signing Exhibit A, as no relevant responsive records exist.

**REQUEST FOR PRODUCTION NO. 9:** Produce all medical records that relate to any physical injuries or ailments you are complaining about in your lawsuit.

**RESPONSE:** No responsive records.

**REQUEST FOR PRODUCTION NO. 10:** Produce all mental/psychological records that relate to any mental/emotional/psychological injuries you are complaining about in your lawsuit.

**RESPONSE:** No responsive records.

**REQUEST FOR PRODUCTION NO. 11:** Produce all of your mental/psychological/emotional health records for the period January 1, 2014 to the present.

**RESPONSE:** Objection. This request is disproportionate to the discovery needs of this case, is not calculated to the discovery of admissible evidence and is facially overly broad and unduly burdensome. Plaintiff's employment with Defendant was not terminated until January 30, 2019, and

*D. Colby Addison*

D. Colby Addison, OBA #32718  
Leah M. Roper, OBA #32107  
1133 N. Portland Ave.  
Oklahoma City, OK 73107  
Telephone: 405.252.1180  
[colby@centerforemploymentlaw.com](mailto:colby@centerforemploymentlaw.com)  
[leah@centerforemploymentlaw.com](mailto:leah@centerforemploymentlaw.com)  
ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing instrument was: ( X ) mailed via U.S. Mail; ( ) certified, with return receipt requested; ( ) hand delivered; ( ) transmitted via facsimile; and/or (X) e-mail on this 3rd day of January, 2020 to the following:

Ambre C. Gooch  
Jordan Miller  
Collins, Zorn & Wagner, PC  
429 NE 50<sup>th</sup>, 2<sup>nd</sup> Floor  
Oklahoma City, OK 73105  
[acg@czwlaw.com](mailto:acg@czwlaw.com)  
[jlm@czwlaw.com](mailto:jlm@czwlaw.com)  
ATTORNEY FOR DEFENDANT

*D. Colby Addison*

\_\_\_\_\_  
ATTORNEY FOR PLAINTIFF

**From:** Jordan Miller  
**Sent:** Friday, January 24, 2020 2:12 PM  
**To:** 'D. Colby Addison' <colby@centerforemploymentlaw.com>  
**Cc:** Ambre Gooch <ACG@czwlaw.com>; Shawna E. Golden <SEG@czwlaw.com>  
**Subject:** Nere

Hello Colby,

This is to confirm that at our Rule 37 conference today, you handed me additional documents, as well as the verification for interrogatory responses. You indicated that you have now provided all documents that the discovery responses indicated would be forthcoming, with the exception of tax returns (which you indicated you would provide as soon as a protective order was entered).

Additionally, you indicated that you are not withholding anything pursuant to a privilege at this time, and thus there is no need for a privilege log, as nothing is being withheld.

You indicated you are standing by your objection to providing all times Plaintiff was terminated or asked to resign, but that you have not yet made a decision on whether to provide a response to Interrogatory No. 19, which narrows that request down to the last ten years. It is possible you will provide a response to that, but you provided no opinion on whether you will do so at this time. Please give us an answer by Wednesday, January 29 on whether you will provide us at least the last ten years of times that Plaintiff has been terminated or been asked to resign. If you will not do this, we will likely file a motion to compel.

Additionally, you indicated that Plaintiff has seen no medical providers for any emotional distress or other medical reasons for the activity discussed in Plaintiff's complaint, and that you would not provide the names of any medical providers or sign a release, as there was no doctors to name. I indicated that we are entitled to the names of all doctors for the requested time period that Plaintiff has seen for any reason, and that we would likely agree to a limited release related to emotional distress, anxiety, therapy, mental health counseling, etc so that we can see for ourselves from all of Plaintiff's doctors whether there were other sources for his emotional distress. You indicated you would give me your position on this suggestion by Wednesday, January 29. If you do not agree to this, we will likely file a motion to compel.

Please let me know if there is anything in this email that you think does not accurately recount our conversation.

Thanks,  
Jordan



**From:** D. Colby Addison [mailto:colby@centerforemploymentlaw.com]  
**Sent:** Wednesday, January 29, 2020 4:48 AM  
**To:** Jordan Miller <JLM@czwlaw.com>  
**Cc:** Ambre Gooch <ACG@czwlaw.com>; Leah Roper <leah@centerforemploymentlaw.com>  
**Subject:** Nere v. Crescent; 37.1 Meeting Follow-Up

Jordan:

We are standing by our objections to Interrogatories Nos. 7 and 8 along with Request for Production No. 8. Defendant is not entitled to go on a fishing expedition through Plaintiff's medical history to try to blame the consequences of its actions on something else. Defendant is entitled to ask Plaintiff questions in his deposition about his emotional distress. That is far less harassing and respects his protected privacy rights.

Regarding your email seeking confirmation of our production of responsive documents within my client's possession, custody, or control, there are no documents being withheld other than responsive tax returns, which are being withheld until the entry of a protective order.

Sincerely,

**D. Colby Addison**  
Attorney at Law  
The Center for Employment Law  
1133 N. Portland Ave.  
Oklahoma City, OK 73107

Office: 405.252.1180  
Direct: 405.252.0535  
[CenterForEmploymentLaw.com](http://CenterForEmploymentLaw.com)

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Seegmiller v. Macey's Inc. | Cases | Westlaw

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Westlaw is recommending documents  
based on your current research.2013 WL 3148464  
United States District Court, D. Utah, Central Division.

United States Magistrates

Consent

Magistrate Judge Under Civil Rights Act

## Secondary Sources

(BNA) 1554 (Approx. 4 pages)  
Civil Jurisdiction of Magistrates under  
Federal Magistrates Act of 1968 (28  
U.S.C.A. secs. 631 et seq.)128 A.L.R. Fed. 115 (Originally published in  
1995)...In 1968 Congress passed the Federal  
Magistrates Act (28 U.S.C.A. §§ 631 et seq.)  
transferring all the powers and duties of the  
former United States Commissioners, along  
with other powers, to the newly ...Propriety of amount of attorneys' fees  
awarded to prevailing parties under  
Civil Rights Attorney's Fees Awards  
Act of 1976 (42 U.S.C.A. sec. 1988)118 A.L.R. Fed. 1 (Originally published in  
1994)...Under the Civil Rights Attorney's Fees  
Awards Act of 1976 (42 U.S.C.A. § 1988), a  
court, in its discretion, may allow a prevailing  
party, other than the United States,  
reasonable attorney's fees in act...Construction and Application of Civil  
Rights Attorney Fee Provision, 42  
U.S.C.A. § 1988--United States Supreme  
Court Cases43 A.L.R. Fed. 2d 1 (Originally published in  
2010)...The federal civil rights attorney's fee  
statute, 42 U.S.C.A. § 1988, gives a court the  
discretion, in an action under specified civil  
rights statutes, to award the prevailing party,  
other than the Unit...

See More Secondary Sources

## Briefs

## Petition for Writ of Certiorari

2019 WL 2500808  
Charles L. RYAN, et al., Petitioners, v. Shawn  
JENSEN, et al., Respondents.  
Supreme Court of the United States  
June 12, 2019...FN1. Victor Parsons and Dustin Brislan  
were also Plaintiffs below, but they were  
dismissed from the lawsuit prior to its  
disposition. Judicial independence is  
indispensable to the administration of jus...

## Brief for Respondent

2003 WL 261025  
Joseph C. Roell, Petra Garibay, James  
Reagan v. Jon Michael Withrow  
Supreme Court of the United States  
Jan. 21, 2003...FN\* Counsel of Record The Issue in this  
case is whether the Federal Magistrates Act  
requires parties to consent before a  
magistrate judge presides at trial and enters  
judgment, as respondent Jon Michael...

## Brief for Petitioner

2007 WL 3276497  
Homero GONZALEZ, Petitioner, v. UNITED  
STATES OF AMERICA, Respondent.  
Supreme Court of the United States  
Nov. 05, 2007

Seegmiller v. Macey's Inc.

United States District Court, D. Utah, Central Division. June 19, 2013 Not Reported in F Supp 2d 2013 WL 3148464 118 Fair Empl Prac Cas

MACEY'S INC., a Utah corporation; and Max Broadhead, an individual,  
Defendant.

No. 2:12-cv-00875.

June 19, 2013.

## Attorneys and Law Firms

Michael C. Smith, Smith Law, Provo, UT, for Plaintiff.

Ruth A. Shapiro, Christensen &amp; Jensen PC, Salt Lake City, UT, for Defendant.

## MEMORANDUM DECISION &amp; ORDER

DUSTIN PEAD, United States Federal Magistrate Judge.

\*1 This matter is assigned to Magistrate Judge Dustin Pead pursuant to the parties' consent to jurisdiction under 28 U.S.C. § 636(c) (Dkt. No. 9, 25). Currently pending before the Court is Macey's Inc. and Max Broadhead's (collectively "Defendants") Motion To Compel Holly Seegmiller's ("Plaintiff") Medical Records (Dkt. No. 26). After careful review of the parties' memoranda, the Court concludes that oral argument would not materially assist in the determination of this matter. See DUCivR 7-1(f).

## BACKGROUND

The following facts are taken from Plaintiff's Amended Complaint as filed with the Court on March 18, 2013 (Dkt. No. 20).

On November 18, 2009, Plaintiff began her employment as a delicatessen worker at Macey's grocery store located in Pleasant Grove, Utah. *Id.* In October of 2012, Max Broadhead was promoted to delicatessen manager and became Plaintiff's immediate supervisor. *Id.* As her supervisor, Broadhead repeatedly subjected Plaintiff to numerous instances of unwelcome sexual conduct and harassment. <sup>1</sup> *Id.* Although Plaintiff reported the harassment to Macey's management, the store "took no action to investigate the complaint or to stop the harassment from continuing." *Id.* at ¶ 13. In retaliation for reporting the harassment, Plaintiff claims that she was given reduced work hours and prohibited from transferring to an alternate store located in Lehi, Utah. *Id.*

Based upon these events, Plaintiff filed her Amended Complaint alleging causes of action against Defendant Maceys for Sexual Harassment (count 1) and Retaliation (count 2) in violation of Title VII of the Civil Rights Act of 1964, and Negligent Supervision and Retention (count 4), and against Defendant Broadhead for Intentional Infliction of Emotional Distress (count 3). *Id.* Plaintiff is seeking lost wages, special, general and punitive damages. *Id.*

## MOTION TO COMPEL

On May 14, 2013, in response to Plaintiff's objection to Defendants' subpoenas,<sup>2</sup> Defendants filed a "Motion To Compel" requesting that the Court order Plaintiff's medical providers to comply with the subpoenas and provide access to Plaintiff's medical and psychological records (Dkt. No. 26). Defendants assert that access is warranted because the records are critical to an evaluation of Plaintiff's claims for emotional and psychological harm (Dkt. No. 26).



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Plaintiff objects, arguing that her medical records are not relevant and that she has not waived the therapist-patient privilege (Dkt. No. 31). Further, to the extent that the privilege is at issue, Plaintiff "withdraws any claim to emotional distress damages which would require her to allow the disclosure of her therapist's notes." *Id.* at 4.

#### ANALYSIS

Pursuant to Federal Rule of Civil Procedure 26(b)(1), discovery may be obtained "regarding any non-privileged matter that is relevant to any party's claim or defense ... Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Fed.R.Civ.P. 26(b)(1).

<sup>2</sup> In accordance with the rule's broad construction of relevance, courts have held that "discovery requests seeking an employment discrimination plaintiffs medical and psychological records are ... relevant as to both causation and the extent of plaintiffs alleged injuries and damages for emotional pain, suffering, and mental anguish." *Combe v. Cinemark, USA, Inc.*, 1:08-cv-142 TS, 2009 U.S. Dist. LEXIS 99820 \*6, 2009 WL 3584883 (D.Utah Oct. 26, 2009) (citing *Owens v. Sprint/United Management Co.*, 221 F.R.D. 657, 659-660 (D.Kan.2004)); see also *Becker v. Securitas Sec. Servs. USA, Inc.*, 2007 U.S. Dist. LEXIS 15818, 2007 WL 677711 (Mar. 2, 2007) (medical records discoverable in a Title VII employment discrimination action claiming emotional distress); *Sims v. Unified Gov't of Wayandotte County/Kansas City*, 2001 U.S. Dist. LEXIS 16211, No. Civ. A. 99-2406-JWL, 2001 WL 1155302, \*3 (D. Kan. May 1, 2001) (plaintiff placed mental and emotional state at issue by claiming damages for mental anguish and emotional distress in connection with her Title VII discrimination and retaliation claims). In addition, a plaintiffs medical records are relevant to the "preparation of defendant's defenses against the emotional distress claims because the records may reveal another source of stress unrelated to defendant which may have affected a plaintiffs emotional distress." *Combe* at \*6 (citing *EEOC v. Sheffield*, 2007 U.S. Dist. LEXIS 43070, 2007 WL 1726560, at \*4) (M.D.N.C. June 13, 2007).

Here, Plaintiff puts her medical and psychological health at issue by seeking to recover damages for emotional distress. Specifically, Plaintiff asserts that as a result of Defendants actions she has suffered "physical and emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, loss of dignity, [and] emotional distress. ...." (Dkt. No. 20).<sup>3</sup> Under such circumstances, access to Plaintiff's medical and mental health records is warranted so that Defendants may evaluate, for purposes of their own defense, whether Plaintiff's emotional distress stems from her allegations, a pre-existing condition or from events entirely unrelated to the Defendants.

While Plaintiff argues that the psychotherapist-patient privilege as established in *Jaffie v. Redmond*, 518 U.S. 1, 116 S.Ct. 1923, 135 L.Ed.2d 337 (1996) is "sacrosanct," numerous courts have concluded that such privilege is not absolute and that "similar to [the] attorney-client privilege that can be waived when the client places the attorney's representation at issue, a plaintiff waives the psychotherapist-patient privilege by placing his or her medical condition at issue." *Schoffstall v. Henderson*, 223 F.3d 818, 823 (8th Cir.2000) (collecting cases) (cited in *Fisher v. Sw. Bell Tel. Co.*, 361 F. App'x 974, 978 (10th Cir.2010) (unpublished decision); see also *Doe v. Oberweis Dairy*, 456 F.3d 704, 718 (7th Cir.2006) (stating the psychotherapist-patient privilege is not absolute and therefore a plaintiff who seeks damages for emotional distress "places his or her psychological state in issue, [and] the defendant is entitled to discover any records of that state."). The Court finds these cases persuasive and agrees that by placing her medical condition at issue Plaintiff waived the psychotherapist-patient privilege.

<sup>3</sup> For the above stated reasons, the Court finds that Plaintiff has put her medical and psychological health at issue by seeking to recover damages for emotional distress. As a result, the Court concludes that Plaintiff's records are discoverable and Defendants' Motion To Compel is hereby GRANTED. Plaintiff indicates that she intends to "withdraw[ ] any claim to emotional distress damages which would require her to allow the disclosure of her therapist's notes." (Dkt. No. 31). Accordingly, the Court Orders that if Plaintiff intends to withdraw any claims, she do so by filing a formal Motion To Amend her Complaint within twenty (20) days from the date of this Ruling.

#### All Citations

Not Reported in F.Supp.2d, 2013 WL 3148464, 118 Fair Empl.Prac.Cas. (BNA) 1554

#### Footnotes

...FN\* Counsel of Record The opinion of the Court of Appeals, J.A. 24-33, is reported at 483 F.3d 390. The judgment of the Court of Appeals was entered on March 30, 2007. The petition for a writ of certio...

See More Briefs

#### Trial Court Documents

U.S. v. Isaia

2017 WL 2972045  
UNITED STATES OF AMERICA, Plaintiff, v  
Lucian Gabriel ISAIA, Defendant.  
United States District Court, C.D. California,  
June 23, 2017

... In the presence of the attorney for the government, the defendant appeared in person on this date. COUNSEL Elizabeth Carpenter, Appointed (Name of Counsel) GUILTY, and the court being satisfied that t...

U.S. v. Pulido-Garcia

2007 WL 4915201  
UNITED STATES OF AMERICA, v PULIDO-GARCIA, Emilio, Defendant  
United States District Court, C.D. California  
Nov 19, 2007

... Social Security No. XXX-XX-XXXX (Last 4 digits) MONTH DAY YEAR In the presence of the attorney for the government, the defendant appeared in person on this date. Nov. 19, 2007 COUNSEL X WITH COUNSEL Pa...

U.S. v. Berrios

2007 WL 4915126  
UNITED STATES OF AMERICA, v.  
BERRIOS, John Erik aka: John Erik, Barrios, John Eric Barrios, Johnny Berries, Joan Erik Barrios, Tony Rodriguez, "Agent", Defendant.  
United States District Court, C.D. California  
Oct. 15, 2007

... Social Security No. 9584 (Last 4 digits) MONTH DAY YEAR In the presence of the attorney for the government, the defendant appeared in person on this date. Oct. 15, 2007 COUNSEL X WITH COUNSEL Rick Gold...

See More Trial Court Documents

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Seegmiller v. Macey's Inc. | Cases | Westlaw

- 1 Specifically, Plaintiff alleges that Mr. Broadhead made vulgar and sexually demeaning comments to her about other female employees and customers, told Plaintiff she would get a raise if she showed him her breasts, and forced Plaintiff to look at pornographic photographs and videos on his cell phone. *Id.*
- 2 See Dkt. No. 26–4, Letter to Defendants stating “Plaintiff Holly Seegmiller objects to and opposes the subpoenas and production of any and all medical and psychological records regarding plaintiff, on all available legal grounds, including her rights of privacy, physician-patient and psychologist-therapist privilege, and undue prejudice.” See Dkt. No. 27, Plaintiff’s former therapist, Cindy White, filed a formal objection to Defendants’ subpoena asserting that the records sought are protected by the patient-therapist privilege.
- 3 While the issue was not raised by Plaintiff, the Court notes that “[m]edical records relating to treatment and counseling are relevant even when plaintiff seeks ‘garden variety’ emotional damages under Title VII.” *Combe* at \*6 (citing, *Wooten v. Certainfeed Corp.*, 2009 WL 2407715, at \*1 (D.Kan. Aug.4, 2009). Here, Plaintiff seeks emotional distress damages against Defendant Maceys (count 4), and has brought a direct claim for intentional infliction of emotional distress against Defendant Broadhead (count 3) (Dkt. No. 20).

End of  
Document

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2/25/2020

Sims v. Unified Government of Wyandotte County/Kansas City, Kansas | Cases | Westlaw

WESTLAW

Distinguished by *Tiley v. Equifax Information Services, LLC*, D Kan., September 4, 2007

2001 WL 1155302

**Sims v. Unified Government of Wyandotte County/Kansas City, Kansas**

United States District Court, D. Kansas May 1, 2001 Not Reported in F Supp 2d 2001 WL 1155302 (Approx. 4 pages)

Diane E. SIMS, Plaintiff,

v.

The UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS  
CITY, KANSAS, et al., Defendants.

No. CIV. A. 99-2406-JWL.

May 1, 2001.

## MEMORANDUM AND ORDER

WAXSE, Judge.

\*1 A telephone hearing was held on April 11, 2001 regarding the following motions: (1) Defendants' Motion to Compel (doc. 76); (2) Plaintiff's Motions to Extend Time (doc. 92 and 95); and (3) Defendants' Motion to Strike (doc. 94). Plaintiff appeared through her counsel John B. Gage. Defendants appeared through their counsel Gregory P. Goheen.

This Order will memorialize the rulings made at the telephone hearing. It will also address several issues relating to the Motion to Compel (doc. 76) that the Court took under advisement at the telephone hearing. In addition, it will memorialize the Court's ruling denying Plaintiff's Motion for Leave to File Memorandum in Opposition to Motion to Strike Out of Time (doc. 117), of which the parties were orally informed prior to the telephone hearing.

## I. Plaintiff's Motions to Extend Time (doc. 92 and 95)

The Court finds that Plaintiff's first motion for extension of time to file her opposition to Defendant's Motion to Compel was timely; however the second motion was untimely. The second motion, which should have been filed on February 6, 2001, was not filed until February 7. The Court finds that Plaintiff has made an excessive number of requests for extension of time in this case. Moreover, the Court does not find that Plaintiff has established the necessary good cause or excusable neglect that would justify allowing Plaintiff to file her response out of time. The Court will therefore deny the second motion for extension of time.

## II. Plaintiff's Motion for Leave to File Memorandum in Opposition to Motion to Strike Out of Time (doc. 117)

As the Court has already orally informed counsel, this motion is denied. In order to be timely, Plaintiff's opposition to the Motion to Strike should have been filed by February 26, 2001. Plaintiff did not timely oppose the Motion and waited more than one month to file the instant motion for leave to file her opposition out of time. The Court does not find that Plaintiff has established good cause or excusable neglect sufficient to support her request.

## III. Defendants' Motion to Strike (doc. 94)

When Plaintiff filed her second motion for extension of time to file her opposition to Defendants' Motion to Compel, she also filed her opposition brief (doc. 97). Because the Court has denied the second motion for extension of time, her opposition was untimely filed. The Court will therefore grant Defendants' Motion to Strike Plaintiff's opposition. Plaintiff's Memorandum in Opposition to Motion to Compel (doc. 97) is hereby stricken.

## IV. Defendants' Motion to Compel and Request for Sanctions (doc. 76-1 and 76-2)

Although the Court has stricken Plaintiff's written opposition to the Motion to Compel, the Court did hear oral argument from Plaintiff's counsel at the telephone hearing. The Court

## SELECTED TOPICS

Criminal Law

Post-Conviction Relief Petition Specificity and Detail

## Secondary Sources

Sec 60-1507. Prisoner in Custody under Sentence

5 Kan. Law &amp; Prac., Code Of Civ. Proc. Anno. § 60-1507 (5th ed.)

...The procedure under this section is now provided in some detail by rule 183 of Supreme Court rules relating to district courts (see Appendix B, Volume 6). Care has been taken to set up uniform standard.

§ 2168. Successive proceedings for postconviction relief under state statutes or rules

24 C.J.S. Criminal Procedure and Rights of Accused § 2168

A state is free to impose proper procedural bars to restrict repeated returns to state court for postconviction proceedings. State postconviction relief rules are specifically designed, where possible,...

## Appendix B Rules Relating to District Courts

6 Kan. Law &amp; Prac., Code Of Civ. Proc. Anno. App. B (5th ed.)

...The attached report, adopted by the Supreme Court Standards Committee on October 24, 1980, was adopted by the Supreme Court, effective December 11, 1980, as a statement of the goals of the Kansas Judic...

See More Secondary Sources

## Briefs

## JOINT APPENDIX, VOL. III

2009 WL 1230313

E. K. MCDANIEL, WARDEN and THE ATTORNEY GENERAL OF THE STATE OF NEVADA, Petitioners, v. TROY BROWN, Respondent.  
Supreme Court of the United States  
May 01, 2009

...FN\* Counsel of Record XX/XX/XXXX  
LABORATORY NUMBER: L0277-94-A  
AGENCY: CARLIN P.D. AGENCY CASE #: 0194-0070 SUSPECT: BROWN, TROY  
VICTIM: ALLRED, MEGAN PERSON  
REQUESTING: ROY LADD-ELKO PD DATE OF SUBMIS...

## Brief of Appellee

2015 WL 9480548

Danny BEAUCLAIR, Defendant-Appellant, v. STATE OF KANSAS, Plaintiff-Appellee.  
Court of Appeals of Kansas  
Oct. 30, 2015

...Beaucclair argues that the district court erred when it summarily denied his K.S.A. 60-1507 motion. A district court has three options when resolving a K.S.A. 60-1507 motion. First, the district court m...

## Joint Appendix

2009 WL 2163261

JOE HARRIS SULLIVAN, Petitioner, v. STATE OF FLORIDA, Respondent.  
Supreme Court  
July 16, 2009

DEFENDANT'S  
EXHIBIT  
10

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Sims v. Unified Government of Wyandotte County/Kansas City, Kansas | Cases | Westlaw

will decline to grant the Motion to Compel as uncontested. The Court makes the following rulings as to the Motion to Compel:

#### A. Defendant Unified Government's First Set of Interrogatories to Plaintiff

##### 1. General objections

\*2 The Court overrules Plaintiff's first general objection that the interrogatories exceed the limit on interrogatories contained in the Scheduling Order. That Order allowed each party to submit fifty interrogatories upon any other party. Even counting each subpart as an individual interrogatory, the Unified Government of Wyandotte County/Kansas City, Kansas' ("Unified Government") interrogatories do not exceed that limit.

The Court also overrules Plaintiff's second general objection, that the interrogatories are overly broad and burdensome, except as discussed below with respect to certain interrogatories.

In addition, the Court overrules Plaintiff's third general objection, that Defendant's general instructions impose a greater obligation than that required by Fed.R.Civ.P. 26 and 33.

##### 2. Objections to specific interrogatories

##### a. Interrogatory No. 5

The Court sustains Plaintiff's objection that this interrogatory is overly broad as to the time period covered. The Court will limit the interrogatory to the period of Plaintiff's employment with the Unified Government through the present and the two-year period prior to that employment. All other objections to Interrogatory No. 5 are overruled.

##### b. Interrogatory No. 6

Plaintiff informs the Court that he has already provided the Unified Government with the information requested in this interrogatory. The Court will thus deny the Motion to Compel as moot with respect to this interrogatory.

##### c. Interrogatory No. 9

This interrogatory asks Plaintiff to identify each person that she expects to call as an expert witness at trial and to provide certain information about the expert's opinions. The Court overrules all of Plaintiff's objections to this interrogatory. Plaintiff shall answer this interrogatory to the extent she presently knows who she plans to call as an expert witness and to the extent she presently knows the other information requested. If she later determines to designate a testifying expert, she shall supplement her response with the requested information at that time.

##### d. Interrogatory Nos. 14, 16, 17, 18, 20, 21

The Court overrules all objections to these interrogatories.

##### e. Interrogatory No. 23

The Court overrules Plaintiff's objections to this interrogatory. Plaintiff shall provide the Unified Government with a supplemental response providing any additional information that forms the factual basis for her allegation that Dennis Hays "actually possessed any knowledge of plaintiff's situation." If Plaintiff has no other information responsive to this interrogatory, she shall serve a supplemental response stating that she has no additional information.

##### f. Interrogatory No. 31

This interrogatory seeks information regarding the health care providers and psychologists who have provided health care to Plaintiff within the past ten years. The Court sustains Plaintiff's objection that this interrogatory is overly broad in that it requests information for the past ten years. The Court will limit this interrogatory to the period of Plaintiff's employment with the Unified Government through the present and the two-year period prior to that employment.

\*3 The Court overrules all other objections, including Plaintiff's objection that none of this information need be provided because Plaintiff does not plan to present any medical expert testimony in support of her claims for mental anguish and emotional distress.

Plaintiff has placed her mental and emotional state at issue by claiming damages for "mental anguish, emotional distress, [and] loss of enjoyment of life" in connection with her Title VII discrimination and retaliation claims (Third Amended Complaint, Count I, ¶ 74) and by claiming those same damages and damages for "pain and suffering" in connection with her section 1981 claim (Count II, ¶ 79), Title VI claim (Count IV, ¶ 69), section 1985 claim (Count V, ¶ 76), and due process claim (Count VIII, ¶ 97). The medical and psychological

...FN\* Counsel of Record Joe Harris Sullivan moves this Court pursuant to Rule 3.850 of the Florida Rules of Criminal Procedure for relief from his unconstitutionally obtained conviction and sentence, and...

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#### Trial Court Documents

Thomas WOODBERRY, Movant, v. The State of Kansas, Respondent.

2003 WL 25277366  
Thomas WOODBERRY, Movant, v. The State of Kansas, Respondent  
District Court of Kansas  
Jan 07, 2003

...NOW ON THIS 19th day of December 2002, the motion pursuant to K.S.A. 601507 filed herein on June 7, 2002 comes on for hearing. The movant is represented by his attorney, David Freund. The respondent is...

#### State v. Horn

2019 WL 5725061  
STATE of Kansas, Plaintiff, v. Jerry Allen HORN, Defendant.  
District Court of Kansas  
Nov 04, 2019

...Division 2 On August 26, 2019, the Defendant filed a motion to correct illegal sentence. He raises a single issue that turns upon the advice given in his colloquy with the District Judge regarding the ...

Blaine E. SAMPSON and Margaret M. Sampson, Plaintiffs, v. BIOMAT, INC., et al., Defendants.

2002 WL 34080708  
Blaine E. SAMPSON and Margaret M. Sampson, Plaintiffs, v. BIOMAT, INC., et al., Defendants.  
District Court of Kansas.  
Aug. 12, 2002

...This matter is before the court for ruling on Defendants' ("Biomat") Motion for Partial Summary Judgment ("Second Motion") on Counts I, II and V of Plaintiffs' ("Sampsons") First Amended Petition ("Pet..."

See More Trial Court Documents

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Sims v. Unified Government of Wyandotte County/Kansas City, Kansas | Cases | Westlaw

information sought by this interrogatory appears relevant to both causation and the extent of Plaintiff's alleged injuries and damages. *See Hilt v. SFC, Inc.*, 170 F.R.D. 182, 186 (D.Kan.1997) (overruling objections to interrogatory asking sexual harassment plaintiff who claimed damages for mental and emotional pain to identify all physicians and health care professionals who had treated her or with whom she had consulted).

The fact that Plaintiff is not planning to present any expert testimony in support of her emotional distress and mental anguish claims does not make this information any less relevant. Moreover, the Court has been unable to locate any case law supporting Plaintiff's contention that this information is discoverable only if she were planning to present expert testimony regarding her mental and emotional condition.

B. Defendant Dennis M. Hays' First Set of Interrogatories to Plaintiff 1. General objections Plaintiff asserts the same general objections to Defendant Hay's Interrogatories that she made in response to the Unified Government's Interrogatories. The Court makes the same rulings regarding these objections that it made above in Part IV.A.1 concerning the Unified Government's Interrogatories.

#### 2. Objections to specific interrogatories

The Court overrules all of Plaintiff's objections to Interrogatory Nos. 2, 3, 6, 7, and 9–12.

#### C. Defendant Joseph M. Connor's First Set of Interrogatories to Plaintiff

The parties informed the Court at the telephone hearing that they would work together to resolve any disputes remaining about these interrogatories. The Motion to Compel is therefore denied as moot with respect to these interrogatories.

#### D. Municipal Defendants' Requests for Production of Documents to Plaintiff

##### 1. Request for Production No. 2

The parties also informed the Court that Plaintiff has provided the documents responsive to this request. The Court will therefore deny the Motion to Compel as moot with respect to this request.

##### 2. Request for Production No. 3

The Court will overrule all of Plaintiff's objections to this request, except to the extent that Plaintiff contends the requested statements are privileged. Plaintiff shall submit the requested statements to the Court for an *in camera* inspection. Said documents shall be provided to the Court by May 11, 2001. The Court will then determine whether any of the statements are privileged and not subject to discovery.

##### 3. Request for Production No. 5

\*4 The Court will sustain Plaintiff's objection that this request is overly broad and will limit the request to the period of Plaintiff's employment with the Unified Government through the present and the two-year period prior to that employment. All other objections to this request are overruled.

##### 4. Request for Production No. 6

The Court will sustain Plaintiff's objection that the request is overly broad in that it requests releases for medical and psychological records from 1983 to the present. The Court will limit the request to the period of Plaintiff's employment with the Unified Government through the present and the two-year period prior to that employment. The Court will overrule all other objections, including Plaintiff's objection that none of the releases for these records need be provided because Plaintiff will not present any expert testimony in support of her claim for mental anguish and emotional distress damages. (See discussion above in Part IV.A.2 .f., addressing the Unified Government's Interrogatory No. 31.)

##### 5. Request for Production No. 7

The Court sustains Plaintiff's objection that this request is overly broad in that it requests releases for educational records for an unlimited period of time. The Court will limit the request to the period of Plaintiff's employment with the Unified Government. The Court overrules all other objections to this request.

##### 6. Request for Production No. 10

Plaintiff objects to producing any documents that she provided to or received from the Equal Employment Opportunity Commission ("EEOC"), Kansas Human Rights Commission ("KHRC") or any other administrative agency concerning her allegations because she contends that they are protected work product. The Court finds that Plaintiff waived any work product protection these documents might have enjoyed by disclosing them to the EEOC or other agency. *See McCoo v. Denny's, Inc.*, No. 98–2458 RDR, 2000 WL 307315,

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\*1-2 (D. Kan. Mar. 21 2000) (party waives work product immunity by providing document to KHRC). The Court also overrules Plaintiff's objection that any such documents she *received* from the EEOC or other agency are work product, in that such documents would not have been prepared by Plaintiff, her counsel, or representative. See *Johnson v. Gmeinder*, 191 F.R.D. 638, 643 (D.Kan.2000) (party asserting work product protection must establish, *inter alia*, that the materials "were prepared by or for a party or a representative of that party") (quoting Fed.R.Civ.P. 26(b)(3)).

Plaintiff also objects to producing any documents provided to or received from the EEOC or other agency on the grounds they are attorney-client privileged. The Court overrules that objection also. If Plaintiff *provided* any attorney-client document to a third party such as the EEOC, the privilege would have been waived. If Plaintiff *received* the document from the EEOC or other agency there would be no basis to claim that it was an attorney-client communication in the first place.

\*5 In light of the above, the Court will grant the Motion to Compel as to any documents Plaintiff received from or provided to the EEOC, KHRC, or other administrative agency relating to Plaintiff's allegations. The Court will sustain Plaintiff's assertion that all other documents responsive to this request are privileged or protected by work product and will deny the Motion to Compel as to those documents.

E. Defendants' Request for Sanctions (doc. 76-2)

Because the Court has denied in part and granted in part Defendants' Motion to Compel, the Court will deny the request for sanctions. Each party shall bear its/his/her fees and expenses incurred in connection with the Motion to Compel.

IT IS THEREFORE ORDERED BY THE COURT that Plaintiff's Motion to Extend Time (doc. 92) is granted.

IT IS FURTHER ORDERED that Plaintiff's Motion to Extend Time (doc. 95) is denied.

IT IS FURTHER ORDERED that Plaintiff's Motion for Leave to File Memorandum in Opposition to Motion to Strike Out of Time (doc. 117) is denied.

IT IS FURTHER ORDERED that Defendants' Motion to Strike (doc. 94) is granted. Plaintiff's Memorandum in Opposition to Motion to Compel (doc. 97) is hereby stricken.

IT IS FURTHER ORDERED that Defendants' Motion to Compel (doc. 76) is granted in part and denied in part, as set forth herein. All documents required to be produced as a result of this Memorandum and Order shall be produced by Plaintiff by *May 21, 2001*. Said production shall take place at the offices of Defendants' counsel or at any other location agreed upon by the parties. Plaintiff shall submit to the Court for an *in camera* inspection the claimed privileged statements responsive to the Municipal Defendants' Request for Production No. 3. Said statements shall be submitted to the Court by *May 11, 2001*. The Court will then determine whether any of the statements are privileged and not subject to discovery. All supplemental responses required to be served on Defendant(s) as a result of this Memorandum and Order shall be served by *May 21, 2001*.

IT IS FURTHER ORDERED that Defendants' request for sanctions in connection with the filing of the Motion to Compel (doc. 76-2) is denied. Each party shall bear its/his/her own fees and expenses incurred in connection with the Motion to Compel.

IT IS SO ORDERED.

#### All Citations

Not Reported in F.Supp.2d, 2001 WL 1155302

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